IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER ST.NO.681 OF 2005

Shekhar Somappa Sanil ...Appellant

Vs.

Municipal Corporation of
Greater Mumbai ...Respondent

Mr.A.M.Saraogi for the Appellant
Mr.J.Xavier for Respondent-B.M.C.

CORAM: A.S.OKA, J.
DATED: JANUARY 14, 2005.

P.C.:

1. Shri Saraogi, learned Counsel for the Appellant on instructions of the Appellant who is stated to be present in the Court states that the Appellant desires to withdraw L.C.Suit No.189 of 2005 with liberty to prosecute the Appeal preferred before the State Government under Section 47 of Maharashtra Regional and Town Planning Act, 1966. He states that he will immediately move for an appropriate interim order in the pending Appeal before the State Government. He submits that it may require some time for the Appellate Authority to pass order on the application for interim relief. He pointed out an averment in the plaint that an Application for interim relief in the Appeal was heard on 23-9-2004 and an endorsement of order of stay was made by the concerned Minister which was not communicated as the concerned Hon'ble Minister was given some other portfolio after election. He stated that the Appellate Authority is very busy and it will take some time to pass appropriate

orders. He, therefore, prays that ad-interim order passed by this Court be continued for a period of two months to enable him to take out appropriate application in the pending Appeal. I have heard the learned Counsel for the Respondent who has not seriously opposed the request for withdrawal of the suit.

2. I have also perused averments made in paragraph Nos.12 to 15 of the plaint which show that the Appeal is still pending. I have also perused the earlier order of the City Civil Court dated 13th September 2004 by which the Appellant was granted protection to enable him to apply for regularisation. The Application for regularisation was rejected and the Appeal preferred by the Appellant is kept pending by the State Government since September 2004. Considering these factors and considering that the Appellant wants to withdraw the suit, the request made by the Appellant is not unreasonable.

3. Accordingly, I pass the following order :

a) L.G.Suit No.189 of 2005 is dismissed as withdrawn with no order as to costs. The dismissal of the suit will not preclude the Appellant from prosecuting the Appeal preferred by him before the State Government under Section 47 of M.R.T.P. Act,1966.

b) Ad-interim order passed by this Court on 13th January 2005 will continue to operate for four weeks to enable the Appellant to make appropriate application before the State

Government in pending Appeal.

c) It is made clear that ad-interim order is continued by this Court only because the Appeal preferred by the Appellant is stated to be kept pending by the State Government and the said order is not extended on consideration of the merits of the case. If the application for interim relief is moved, it will be obviously decided by the Appellate Authority on its own merit. In view of dismissal of the suit, Appeal does not survive and same is dismissed.

d) The learned Trial Judge will pass a formal order in the suit in terms of the order passed by this Court.

Judge.